

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.289 of 1995

Against the judgment and order dated 5th August 1995 passed by Sri P.N. Sukla, 5th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 659 of 1993 arising out of Mauzahidpur P.S. Case No. 163 of 1991 vide G.R. No. 2820 of 1991, District- BHAGALPUR.

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1. Bullo Pandit son of Sukhdeva Pandit, aged 20 years,
 2. Ram Bilash Pandit, son of Sevak Pandit, aged 20 years,
 3. Prakash Pandit, son of Sukhdeva Pandit, aged 25 years

All residents of Village Upper Gangati, P.S. Mauzahidpur, District Bhagalpur.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. P.K. Jaipuriyar
Mr. Anshuman Jaipuriyar and
Miss Anukriti Jaipurriyar, Advocates.

For the Respondent/s : Mr. S.B. Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 10-04-2018

The present Criminal Appeal has been preferred for setting aside the judgment dated 05.08.1995 passed by the learned 5th Additional Sessions Judge, Bhagalpur (hereinafter referred to as 'the trial court') in Sessions Trial no. 659 of 1993 arising out of Mauzahidpur Police Station Case no. 163 of 1991.

2. By the impugned judgment the learned trial court has



been pleased to convict all the accused persons facing trial for committing an offence of murder under Sections 302 / 34 of the Indian Penal Code and all of them have been sentenced to undergo life imprisonment.

3. The prosecution case, as disclosed in the *Fard-e-beyan* of the informant, is that he happened to be a labourer at Bhagalpur, his son Moti Pandit was a Rickshaw Mistri. It is alleged that on 30.10.1991 when he returned at about 6 P.M. from his work his son Moti told that his wife Manorama Devi was returning to her Village Gangti after handing over food to Moti; on this, the informant also followed his wife Manorama Devi, on his way he had also taken a torch from Moti Pandit. It is alleged that as soon as he reached near village Karghar Mahavir Asthan he heard the sound of a woman 'Bachao Bachao'. The informant identified the voice which was of his wife. It is alleged that he reached near Pakki road in the torch light and found there that Prakash Pandit and Bullo Pandit had caught hold of his wife. Bullo Pandit was having a dagger in his hand, Ram Bilash Pandit who is the Bahnoi of Bullo Pandit was holding a 'Pasiyani Hasuan' (a kind of sharp cutting weapon used for cutting crops) in one hand and had caught hold of hairs of his wife from other hand. Informant's wife, it is alleged, was unsuccessfully trying to get out of their hold, at this stage Ram Bilash Pandit cut down the throat of the



wife of the informant saying that she was a witch (Dayan) and had been troubling all of them. It is further alleged that the informant's wife died and fell down on the earth. The informant alleged that out of fear he could not protest and fled towards Aliganj from where he went to his son Moti Pandit and informed him and others and came back to the dead body. The dead boy was lying on the pitch road in between the two villages Katghar and Gangti.

4. *Fard-e-beyan* of the informant Kishun Pandit (PW5) has been marked as Ext.3. Signature of Moti Pandit appearing on the *Fard-e-beyan* has been marked as Ext.1/1. A formal F.I.R. (Ext.5) was recorded at the Police Station. In course of investigation police prepared a seizure list (Ext.4), obtained the post-mortem report (Ext.2) and submitted a charge sheet. The case was committed to the Court of Sessions where the accused persons pleaded innocence and claimed to be tried. Accordingly charges were framed against them for the offence under Sections 302/34 of the Indian Penal Code.

5. In course of trial, out of 11 charge sheet witnesses only 7 witnesses were examined on behalf of the prosecution. PW4 and PW5, who are the son and the husband respectively of the deceased, were most important witnesses but in course of trial they resiled from their statements and in fact PW5, the husband of the deceased, was declared hostile. The Investigating Officer was not examined,



however, the learned trial court took a view that the sole eye witness PW5 in response to the query made by the court, has spoken the truth that he was not deposing because of the threat to him. The learned trial court took a view that this is what is happening in these days in the society where a man strong in muscle and money terrorizes weak people and this is what has happened in this case. Taking note of this aspect of the matter, the learned trial court convicted the appellants.

6. The learned trial court rejected the contention of the defence that the inquest report has not been brought on record by the prosecution and non-examination of the Investigating Officer could prove fatal to the prosecution case as it has prejudiced the defence. The trial court held that non-examination of the Investigating Officer is not vital for the case because in this part of the country there is a system rather tradition of not preparing site map of the place of occurrence, therefore, examination of the I.O., at least in such type of cases, is irrelevant and it does not prejudice the defence because the witnesses who have been declared hostile have not given any statement on which the I.O. was to be cross-examined by the defence.

7. In appeal before us, learned counsel representing the appellants submits that it is a case of no evidence. The informant is said to have reached to the place of his son Moti Pandit at about 6 PM, it was end of the month of October 1991 and at 6 PM darkness



prevails due to early sunset. The informant claimed that he had moved towards Village Gangti after taking a torch from the hand of his son Moti Pandit. The said torch was not produced before the Investigating Officer and no seizure list of the torch was prepared, therefore, the very means of identification becomes doubtful. It is further submitted that the learned trial court has been swayed away on sympathetic considerations towards the prosecution case.

8. It is also pointed out that in course of evidence one Baleshwar Pathak, Sub Inspector of Police came to depose as PW6, who stated that on the alleged date of occurrence he was posted in Mauzahidpur Police Station and was in Patrolling force in Aliganj area. On information that a murder has taken place in between Katghar and Gangti he had gone there with the police force, there he found the informant Kishun Pandit, his *Fard-e-beyan* was recorded and was read over to the informant. He has stated that near the dead body blood was found and one double-cell torch was also found and a seizure list was prepared of the same.

9. Learned counsel for the appellants submits that the entire story as narrated by PW6 stands falsified on the face of the prosecution case. According to the informant, after seeing murder of his wife he fled away towards Aliganj and thereafter he told this story to his son and others. PW6, in his evidence, has not stated as to who



informed him about the alleged occurrence while he was patrolling in Aliganj area. He has stated that when he reached there the informant Kishun Pandit met him where his *Fard-e-beyan* was recorded. He found the torch and blood near the dead body but the question is that the torch which the informant claims to possess cannot be lying near the dead body. The torch possessed by the informant was never produced, moreover, the prosecution is totally silent on how the informant and his son were found present near the dead body when the police reached there because it is the case of the informant that he had fled towards Aliganj and he had fled towards Aliganj why he did not inform this occurrence to the patrolling party. The informant nowhere claimed that he had gone to the Police Station. Learned counsel therefore assailed the impugned judgment saying that learned trial court has not appreciated the evidences available on record keeping in mind that in absence of any independent and reliable evidence to support that PW5 had gone hostile due to any threat to him and in absence of any evidences to prove the guilt against the accused they cannot be convicted and sentenced to undergo life imprisonment.

10. On the other hand, learned A.P.P. for the State supported the impugned judgment and submitted that the learned trial court rightly convicted all the accused appellants in the present case.



11. Having heard learned counsel for the appellants and learned A.P.P. for the State we are of the considered opinion that in the present case the prosecution has failed to bring home the guilt of the accused-appellants beyond all reasonable doubts. The means of identification, i.e., the torch, which was in possession of the informant, was not produced before the Investigating Officer. The prosecution has also failed to explain the conduct of the informant in not going to the Police Station to inform the alleged occurrence when the informant returned to Aliganj and is said to have told his son and others about the alleged occurrence.

12. On perusal of the evidence we find that PW1 Mito Pandit has denied having any information regarding the occurrence. He also denied that he had made any statement before the Investigating Officer. PW2 Srinarayan Pandit, who is a seizure list witness, has stated that he did not know about the occurrence. He has signed the seizure list on the asking of the police. PW3 is Dr. N.N. Bhagat, who had performed post-mortem on the dead body of Manorama Devi. He had found four incised wounds on the dead body which, according to him, were caused by sharp-cutting weapon. PW4 is Moti Pandit, who has been declared hostile. He has denied to have given any statement to police. He has denied that his father had told him about the murder of his mother by accused Ram Bilash Pandit.



He has not stated that his father had taken torch from his hand.

13. PW5 is Kishun Pandit, who is also the informant of this case, has stated that he had compromised the matter due to threat. The trial court found that he was feeling afraid. He had come with the father of the two accused Prakash and Bullo. This witness was also declared hostile. He was cross-examined by the prosecution in which he has changed his version and stated that he had not given his *Fard-e-beyan* saying that Ram Bilash Pandit was holding Pasiyani Hasuan in his hand. He has stated that he had not told the name of the accused persons to his son and he had not told his son that the deceased was killed by cutting her throat by Pasiyani Hasuan and knife. He stated that Darogaji had not explained the statements recorded by him as his *Fard-e-beyan*. He has further stated that he had not disclosed the name of Bullo, Prakash and Ram Bilash. He has stated that all the accused persons are innocent.

14. PW6 Baleshwar Pathak had recorded the *Fard-e-beyan* but he had not conducted the investigation. PW7 Kamleshwar Pandey submitted the charge sheet and had proved the formal F.I.R. recorded in the hand-writing and signature of Inspector Md. Azhar.

15. PW6, who recorded the *Fard-e-beyan*, has not stated that he got information about the alleged occurrence through the informant. He is said to have reached near the dead body only on



hearing from some where that a dead body is lying in between the village Aliganj and Gangti on the road. The informant and his son both have been declared hostile by the prosecution. The other prosecution witnesses have not supported the prosecution case.

16. In our opinion, conviction of the accused for offence U/S 302/34 of the Indian Penal Code required a greater responsibility on the learned trial court to examine the witnesses adduced on behalf of the prosecution and not to get swayed away by what has been happening in the society as has been taken note of by the learned trial court. It is difficult to understand that if the informant can say in the court that he has compromised under threat, why he cannot say the truth against the accused persons because in both circumstances he would be deposing against the accused. In his cross-examination by the prosecution, the victim has stated that he had not been explained and read over the statements made by him which was recorded as his *Fard-e-beyan*. He has also stated that he had not named the three accused persons who have been convicted in the present case. This witness had never complained about any threat to him on account of this case. Non-examination of I.O. in this case has definitely prejudiced the case of the defence because in his absence the defence could not take a contradiction on the prosecution version. The case diary recorded by I.O. has not been proved by the prosecution to show



the further statements of the Informant (PW6) and other witnesses under Section 161 of the Code of Criminal Procedure. In absence of evidences beyond all reasonable doubts we are unable to sustain the conviction of the accused appellants. The impugned judgment is, therefore, set aside. The appellants are on bail, hence they are discharged from the liability of their bail bonds.

17. The appeal is allowed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.04.2018
Transmission Date	25.04.2018

